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Viewing cable 10KUALALUMPUR108, CANING OF THREE WOMEN REFLECTS UMNO'S POLITICAL

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- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
- The bottom box presents the body of the cable. The opening can contain a more specific subject, references to other cables ([browse by origin](#) to find them) or additional comment. This is followed by the main contents of the cable: a summary, a collection of specific topics and a comment section.

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#10KUALALUMPUR108.

Reference ID	Created	Released	Classification	Origin
10KUALALUMPUR108	2010-02-19 11:30	2011-08-30 01:44	CONFIDENTIAL	Embassy Kuala Lumpur

Appears in these articles:

<http://www.malaysia-today.net/mtcolumns/40628-islam-as-a-tool-of-politics>

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OO RUEHCHI RUEHDT RUEHHM RUEHNH
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C O N F I D E N T I A L SECTION 01 OF 03 KUALA LUMPUR 000108

SIPDIS

E.O. 12958: DECL: 02/19/2020
TAGS: [KTIP](#) [KCRM](#) [KWMN](#) [PGOV](#) [PHUM](#) [PREL](#) [SMIG](#) [MY](#)
SUBJECT: CANING OF THREE WOMEN REFLECTS UMNO'S POLITICAL
TACTICS

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[1](#)B. KL 14 UPDATE ON THE ALLAH ISSUE
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[1](#)E. 09 KL 716 CANING PUNISHMENT POSTPONED

--- SUMMARY AND COMMENT ---

¶1. (SBU) Summary: On February 17, Home Minister Hishammuddin announced that three women and four men who had been found guilty of illicit sex under Syariah law had been caned on February 9. The three became the first women to be caned in Malaysia. Caning of women in Malaysia had recently become the subject of international scrutiny, and Malaysian legal scholars are wondering what the decision means for the legal system, since caning of women is against federal law. On July 20, 2009, Malaysian Kartika Sari Dewi Shukarno, a Muslim woman, was sentenced by a state-level Syariah court to six lashes with a cane and a fine for consuming alcohol in public. To date, Kartika has not yet been caned. Viewing the caning as a political maneuver, the Islamic Party of Malaysia (PAS) was critical of the GOM's actions contending they were not consistent with Islam. NGOs too were critical of the caning contending that it does not comport with federal law. End Summary.

¶2. (C) Comment: Kartika's case put Prime Minister Najib's new administration in the difficult position of balancing the competing forces fighting for Malaysia's Muslim identity. While concerned about preserving Malaysia's image as a moderate Muslim State, Najib has been unwilling to date to criticize Syariah law or otherwise downplay the seriousness of Kartika's offense for fear that it could damage United Malays National Organization's (UMNO) Islamic bona fides. That the GOM chose to cane three anonymous women, rather than the internationally renowned Kartika, seems to be a tactical maneuver by UMNO to retain or lure back conservative Malay voters as well as perhaps a testing of the waters presaging Kartika's caning. That Najib feels the need to placate the most conservative Malays suggests that his stated intent to change to a more inclusive, less Malay-centric economic and political model is facing considerable resistance within his own coalition. End Comment.

--- FIRST WOMEN CANED IN MALAYSIA ---

¶3. (SBU) Home Minister Hishammuddin announced on February 17 that GOM officials caned four Muslim men and three Muslim women found guilty of illicit sex under Syariah law. Sex out of wedlock is unlawful under Syariah law. The canings took place on February 9, and the three women are believed to be the first women to be caned under the law in Malaysia. Two of the women received six strokes of the cane and the other received four. The women were caned in a female prison. According to the Home Minister, one was released on February 14, one will be released in the coming days, and the third will be released in June.

--- MALAYSIA'S DUAL LEGAL SYSTEM ---

¶4. (SBU) Article 3 of the Malaysian Constitution states that "Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation." Article 3 further provides that issues of Islamic law are state, rather than federal, matters. Thus, states, and the Kuala Lumpur Federal Territory, have individual Syariah law codes and have established Syariah courts, with jurisdiction over Muslims, to deal with family law and certain infractions under Islamic law. The constitution makes clear that federal law has precedence over state law (articles 4 and 75, "if any State law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency, be void"). Hence, because Syariah law is a state matter, any inconsistencies between these two legal systems should, according to the language of the Federal Constitution, be resolved in favor of the federal system. However, Article 121(1A) of the Constitution, added under former Prime Minister Mahathir in 1988 says, "the courts referred to in Clause (1) (the High Courts) shall have no

jurisdiction in respect of any matter within the jurisdiction of the Syariah courts." This amendment introduced ambiguity about Syariah versus civil law that has yet to be resolved clearly.

--- CANING IN MALAYSIA ---

15. (SBU) Under federal law, Malaysian judges routinely

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include caning in sentences of individuals convicted of kidnapping, rape, and robbery. The law also prescribes caning for illegal immigrants and their employers and as an additional punishment for those convicted of some nonviolent crimes such as narcotics possession, criminal breach of trust, and alien smuggling. The caning is carried out with a half-inch wooden cane that can cause welts and scarring. Federal law exempts men over 50 and all women from caning. Conversely, some states prescribe caning under Syariah law, for which there are no exceptions for women. In Syariah caning, a smaller cane is used and the caning official cannot raise the cane above his shoulder. Additionally, the subject is fully clothed so that the cane will not touch the flesh. Local Islamic officials claim that the intent is not to injure but to make the offenders ashamed of their sins and repent.

--- THE CURIOUS ROLE OF THE GOM IN CANING THREE WOMEN ---

16. (C) In the February 9 case, the three women were sentenced to caning for committing adultery in violation of Section 23(2) of the Kuala Lumpur Federal Territory Syariah Criminal Offenses Act of 1997. The sentencing of women to such corporal punishment under Syariah law contradicts the federal law outlined in Section 289 of the Criminal Procedure Code that states that women are not to be subject to caning. In the current case, the three women, previously unknown to the public, were caned and the public was not informed for over a week. The canings were administered by federal prison officials in a federal women's prison. This gives rise to a possible violation of federal law that the GOM has yet to explain or address.

17. (SBU) The federal government has highlighted its role in meting out these sentences, indicating that the decision had Najib's support. Home Minister Hishamuddin (Prime Minister Najib Razak's cousin) placed himself at the forefront of this issue, announcing on February 17 that the women had been caned, commenting that "the punishment is to teach and give a chance to those who have fallen off the path to return and build a better life for the future," sounding much like an Islamic cleric. In a February 19 interview, Deputy Prime Minister Muhyiddin did not address the legal issue, focusing instead on the need to explain that Syariah caning is ritualistic rather than severe. The government-influenced daily, Bernama, on February 19, quoted Minister for Religious Affairs in the Prime Minister's Department Seri Jamil Khir Baharom as saying that the women were remorseful and "welcomed their sentence." In a separate article, Bernama reported that Minister of Women, Family, and Community Development Shahrizat, said that her Ministry will monitor future caning of women noting that "as the minister in charge of women affairs in this country, I really hope that the whipping sentence on Muslim women will be carried out fairly and judiciously."

--- REACTION FROM PAS ---

18. (SBU) When the canings were announced, some observers wondered whether the punishments could be seen as an effort to divide the opposition coalition People's Assembly, expecting PAS to support the punishments, while the secular Democratic Action Party (DAP) would likely oppose the canings. However, PAS Central Working Committee Member and Member of Parliament Dr. Dzulkefly Ahmad of Selangor urged his party not to fall into the trap of allowing UMNO to

portray itself as the defender of the Islamic agenda. He asserted that there is a political motive behind the caning of the three women. If UMNO were sincere about upholding the principles of Islam, it would address the source of problem rather than just implementing the sentence and would be combating corruption, abuse of power, cruelty, and embezzlement of the wealth of the country by political cronies.

19. (SBU) PAS Women's Movement Chief Nuridah Salleh asserted that the GOM's caning of the seven individuals did not conform to Islamic principles because it was done in private and not in the open as required by Islam. She explained that canings are to be public in order to educate and instill awareness among the people and to ensure the violators do not commit the crime again. She called on the Home Minister to remember this intent prior to carrying out future caning sentences.

--- REACTION FROM CIVIL SOCIETY ---

10. (SBU) Civil society groups have condemned the GOM caning of the women. The Malaysian Bar Council, on February 18, issued a press release expressing its "shock and disappointment" and elaborating, "given that the Kartika issue remains unresolved and the public outcry on issues of

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constitutionality in regards to the fact that corporal punishment is forbidden for women under Section 289 of the Criminal Procedure Code, it is indeed shocking that the Government has made the announcement only after the punishment has been carried out." Similarly, Sisters in Islam questioned the GOM's motive behind caning the Muslim women while the issue of Kartika's case remains unresolved. All Women's Action Society president Sophia Lim asserted that "the Home Minister needs to explain why the government allowed the punishment to be carried out in secret on an issue that is of high public interest with very far ranging and damaging consequences."

KEITH